THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No: 11422 of 2005

Between:

Koolla Hari Babu, S/o. Sreeramulu,
R/o. Kollavaripalem, Parchur Mandal ,
Prakasam District.

..... PETITIONER

AND

Ganga Parvathi Semetha Sri Gowrisankaraswamivari Temple

and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No: 11422 of 2005

ORDER:

The grievance of the petitioner in this writ petition is with regard to conduct of auction for grant of lease hold rights of the land belonging to the first respondent-

Temple.

2. Sri N.Subba Rao, learned counsel for the petitioner, challenges the auction notice dated 09-05-2005 on the following grounds:

(i) No Notice, as required under Rule 5(1) of the A.P.Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003, notified in G.O.Ms.No.379, dated 11-03-2003, has been issued in Form No.1.

(ii) The Public auction is required to be held, under Rule 7(3), at a convenient place in the village where the properties are situated or at such other place as may be decided by the competent authority having regard to all the relevant circumstances.

(iii) The property (land belonging to the Temple) is situated at Nutalapadu village whereas auction was conducted at Adusumalli village on 09-05-2005. There is no order of the competent authority, permitting auction to be held at a place other than where the property is situated.

(iv) Under Rule 12(2), every auction conducted under sub-rule (1), shall be in the presence of the Department Officer as may be deputed by the competent authority who shall oversee the proceedings and ensure that the auction is duly conducted in accordance with the Act and Rules.

(v) Under Rule 16(2)(v), the competent Authority of the 1st respondent Temple, whose income is said to be less than Rs.50,000/- per annum, is the Assistant Commissioner.

(vi) No departmental official was been deputed by the Assistant Commissioner to oversee the conduct of auction which is contrary to Rule 12(2).

3. A counter affidavit is filed by the 2nd respondent-Assistant Commissioner of Endowments, Ongole, wherein, none of the contentions raised herein are disputed. It is contended that the lease granted in favour of the petitioner was expired in the year 1993-94 and ever since then the petitioner had been in illegal occupation of the said property. It is further contended that the total extent of land under occupation of the petitioner is of an extent of Ac.4-50 cents and therefore the petitioner does not come under the definition of "landless poor person". It is also stated that the R-1-Temple is in possession of the land and the contention of the petitioner to the contrary is not borne out by record.

4. The question that arises for consideration in this writ petition as to whether or not the auction conducted on 09-05-2005 is in accordance with the statutory rules notified in G.O.Ms.No.379, dated 11-03-2003?

5. There is no dispute that the said auction conducted on 09-05-2005 is in violation of Rule 5(1), Rule 7(3) and Rule 12(2) read with Rule 16(2) (v) of the Rules notified in G.O.Ms.No.379, dated 11-03-2003. Rule 19 of the said Rules provides that any lease granted, continued or allowed to be continued otherwise than in accordance with the rules shall be null and void. The auction, conducted on 09-05-2005, is therefore, set aside. This order shall not preclude the respondent from conducting auction afresh in accordance with the statutory rules notified in G.O.Ms.No.379, dated 11-03-2003.

6. Sri N.Subba Rao, learned counsel for the petitioner submits that the petitioner has raised crops and, if, he is dispossessed from the land under his cultivation, he would suffer irreparable injury. These are all matters, which are for the first respondent, to consider. The petitioner is permitted to submit a representation to the Temple authorities, who shall consider such representation and pass appropriate orders

thereon in accordance with law.

7. It is also stated by the learned counsel for the petitioner that the petitioner has submitted an application under Rule 3 before the Assistant Commissioner (R-2) seeking determination as landless poor person. Needless to state that any such representation filed by the petitioner shall be considered by the 2nd respondent, on its own merits, in accordance with law, without being influenced by any observations that may have been made in this order.

8. The writ petition is allowed. There shall however be no order as to costs.

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RAMESH RANGANATHAN, J

Dated 11-08-2005

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